

MEMO ENDORSED

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USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 10/7/21

October 7, 2021

Via ECF

Hon. Valerie E. Caproni, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

**Re: Emergency Plaintiffs' Letter Requesting for a Ruling on Deposition for
October 8, 2021 & October 11, 2021:**

Chen v. Lilis 200 West 57th Corp., No. 19-cv-07654 (VEC), (S.D.N.Y.)

Your Honor,

We write respectfully seek an emergency Court's Conference and Order on Plaintiffs' request to compel Defendants Lilis 200 West 57th Corp., Baumgart's Next Door Inc., Thean Choo Chong, Siew Moy Low, Ephan "Doe" and "Migi" Doe represented by Defense Counsel from Law Office of Morrison Tenenbaum PLLC to appear on the upcoming scheduled Deposition for October 8, 2021, and October 11, 2021. Plaintiffs' proposes to do a Telephone Conference Today.

On September 17, 2021, Your Honor, extended the discovery deadline in this matter until October 15, 2021, and mentioned no further extensions would be granted in this matter. *See* Dkt. No. 86. Accordingly, parties conferred and set the deposition of Defendants Lilis 200 West 57th Corp., Baumgart's Next Door Inc., Thean Choo Chong, Siew Moy Low to take place on October 8, 2021, with the continued deposition along with Defense Counsel Raymond Nardo's Clients Alan Philips and Jonah Philips to take place on October 11, 2021. On October 6, 2021, at 9:47 p.m., Defence Counsel Joshua Androphy, from Law Office of Morrison Tenenbaum PLLC, notified Plaintiffs' Counsel *via* email, of their clients (Lilis 200 West 57th Corp., 792 Restaurant Food Corp., and Siew Moy Low) anticipated filing of Bankruptcy on October 7, 2021, and that the deposition of the Defendant Thean Choo Chong should also not proceed. *See* Exhibit 1, Defendants Email.

On October 7, 2021 at 11:40 a.m., Plaintiffs' Counsel John Troy, conferred with Defense Counsel Joshua Androphy in order to not incur additional costs for cancelling the deposition, Plaintiffs' requested at what time the Notice of Bankruptcy will be filed since the deposition is scheduled for Tomorrow, October 8, 2021; Defense Counsel merely stated, it will be filed today. Additionally, Plaintiffs' Counsel stated, even if Defendants Lilis 200 West 57th Corp., 792 Restaurant Food Corp., and Siew Moy Low, filed for Bankruptcy on the *Eleventh Hour* of the scheduled deposition, Defendants will still be held liable for any costs associated with the

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deposition cancellation for October 8, 2021 and the Non-Debtor Defendant Thean Choo Chong will be deposed on October 8, 2021, since the automatic stay does not apply to non-debtor Defendants. **Declining to extend automatic stay to individual co-defendants despite bankruptcy of corporate defendant because the individual defendants were sued in their individual capacities as employers of plaintiffs and were alleged to be jointly and severally liable for violations of the FLSA.** See *Mardice v. Ebony Media Operations, LLC*, 2021 WL 146358, at * (S.D.N.Y. Jan. 15, 2021). Declining to extend automatic stay to non-debtors who plaintiffs alleged were “joint employers and, therefore ... jointly and severally liable to the plaintiffs for violations of the FLSA and NYLL”. *Cano v. DPNY, Inc.*, 287 F.R.D. 251, 262 (S.D.N.Y. 2012).

In light of the discovery deadline currently set for October 15, 2021, Plaintiffs now respectfully requests this Court to compel Defendants to appear for their deposition in this matter on October 8, 2021, and for their continued deposition on October 11, 2021. Additionally, should the Defendants file an *Eleventh Hour* Bankruptcy petition today, then Plaintiffs requests, Defendant Thean Choo Chong be made available for his deposition on October 8, 2021, and make Defendants represented by Law Office of Morrison Tenenbaum PLLC be held liable for any costs associated in cancelling the depositions scheduled for Tomorrow October 8, 2021.

We thank the Court for its time and consideration in this matter.

Respectgully Submitted,

/s/ John Troy

John Troy

Attorney for Plaintiffs

Cc: all counsel of record *via* ecf

/pk

The Court will address this issue at the discovery conference currently scheduled for **Friday, October 8, 2021, at 11:30 a.m.**

SO ORDERED.

 10/7/21

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE

RE: Scheduling a discovery call for Friday for 19-cv-7654 Chen v. Lilis 200 West 57th Corp.

2 messages

Joshua Androphy <jandrophy@m-t-law.com>

Wed, Oct 6, 2021 at 9:47 PM

To: troylaw@troypllc.com

Cc: Raymond Nardo <raymondnardo@gmail.com>, Lawrence Morrison <LMorrison@m-t-law.com>

Counsel,

I want to give you a heads up that tomorrow we will be filing bankruptcies for Lilis 200 West 57th Corp., 792 Restaurant Food Corp., and Siew Moy Low.

We maintain that the case should be stayed in its entirety due to the bankruptcies. Please let us know if you agree.

If not, at a minimum, Siew Moy Low's deposition cannot go forward on Friday, nor should Thean Choo Chong's.

Joshua S. Androphy

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